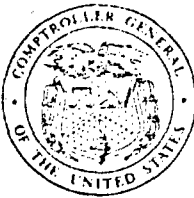


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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-185495

60688
DATE: March 30, 1976

MATTER OF: Hammer Security Services of California, Inc.

98437
DIGEST:

1. When offeror's proposal was not found to be within competitive range under negotiated procurement for security police services, subsequent protest based on alleged ambiguities and deficiencies in solicitation--which were apparent prior to closing date for receipt of initial proposals--is untimely under GAO Bid Protest Procedures.
2. Determination whether proposal is technically acceptable is function of contracting agency, whose judgment will not be disturbed in absence of clear showing that such determination was arbitrary or lacked reasonable basis.
3. Where record supports evaluation conclusion that protester's technical proposal was totally unacceptable and uncorrectable without major revisions, GAO cannot conclude that exclusion of proposal from competitive range pursuant to provisions of ASPR § 3-805.2 was improper.

On August 15, 1975, request for proposals (RFP) F04693-75-R-0012 was issued by the Department of the Air Force to obtain security police services for Los Angeles Air Force Station, Headquarters Space and Missile Systems Organization (SAMSO). The solicitation, a total small business set-aside, requested offerors to provide uniform security and law enforcement services, registration and identification services, and investigative and administrative services. The incumbent contractor was a large business and, therefore, ineligible to submit a proposal. Copies of the RFP were originally sent to 22 sources, however, subsequent requests raised the total number of sources solicited to 42. In order to familiarize prospective offerors with the work site, a facility tour and briefing was conducted on August 25, 1975. Seven proposals were received in response to the solicitation on September 15, 1975, the date set for submission of proposals. Evaluation of proposals commenced on September 16, 1975, and was concluded on October 17, 1975. As a result of a protest lodged on October 9, 1975, one of the seven offerors was determined to be other than a small business. On November 4, 1975, it was initially

determined that five of the six remaining offerors had submitted proposals which were not within competitive range. Since only one offeror remained within the competitive range, the results of the evaluation and the Contracting Officer's determination were submitted to higher authority for review and approval. Concurrence was obtained on November 18, 1975. On November 24, 1975, Hammer Security Services of California, Inc. (Hammer), was one of the offerors notified that its proposal was not within the competitive range.

In correspondence from December 1, 1975, through March 23, 1976, Hammer has protested the evaluation of its proposal and alleged that the solicitation was deficient and ambiguous. In a letter dated December 1, 1975, it requested that

"* * * the Hammer proposal be included in 'the competitive field' under the provisions of [Armed Services Procurement Regulation (ASPR)] 3-805.2 regarding further evaluation of doubtful proposals in order that both the deficiencies and omissions of the RFP and any deficiencies present in the Hammer proposal might be resolved, or that the Comptroller General rule that the procurement be set aside."

Hammer argues that many important items of information which would be necessary if offerors were to accomplish the required tasks were left out of the RFP, were not made clear during the facility tour, and were not made available in response to its requests to Air Force procurement personnel. In addition, it asserts that portions of the RFP instructions tended to be inaccurate or ambiguous. Hammer also contends that certain services required by the terms of the RFP--pertaining to operations required by Air Force Manuals and Regulations--are apparently in conflict with California law.

On September 4, 1975, Hammer received a copy of the RFP which it had requested on August 29, 1975. Therefore, it did not have the opportunity to attend the site visit and briefing. However, the contracting officer's report states that all the information necessary for proposal preparation was contained in the RFP, referenced therein, or made otherwise available by the Air Force. Although Hammer was not represented at the site tour and briefing, it was provided with copies of Amendment 0001 containing the questions raised by those in attendance, and the Air Force answers. In addition, the Air Force maintains that it provided a reference library for the use of all offerors, which contained all regulations, manuals, plans and other documents pertaining to the requirements of the Air Force. In this regard, it is noted that Hammer was located within 15 miles of the library and did use the facilities on at least one occasion.

The protester states it made at least five telephone calls to the procurement personnel for clarification of items in the RFP before the proposal submittal date. Hammer states that the responses by the contracting officer to its questions were "* * * so uniformly in the negative that we were forced to conclude that no meaningful information would be obtained from him at all, * * *." In this regard, Hammer contends that issues of substance were raised which would have led to a protest--were it not for the fact that the contracting officer allegedly stated, in response to a request for waiver of what Hammer considered to be an impossible requirement, that: "* * *[T]his question, and some of the others you have asked, are proper matters to bring up during discussions allowed under ASPR 3-805.2."

The contracting officer confirms that one or more telephone conversations with Hammer took place. However, the contracting officer denies that he indicated, at any time, that questions raised by Hammer concerning the RFP requirements would be clarified in discussions after the receipt of initial proposals. Where, as here, there is an irreconcilable conflict between the parties on a factual point, our Office must accept the contracting agency's account as correct. Phelps Protection Systems, Inc., B-181148, November 7, 1974, 74-2 CPD 244.

Also, section 20.2(b)(1) of our Bid Protest Procedures, 40 Fed. Reg. 17979 (1975), provides that protests against alleged improprieties in an RFP which are apparent prior to the closing date for receipt of initial proposals must be filed prior to the closing date for receipt of initial proposals.

Moreover, we must note that the RFP, as amended, in PART I - Section C - 1 6(b) "INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS" advised that:

"Questions which arise concerning this Request for Proposal must be submitted in writing to the Contracting Officer. Answers to written questions will be provided to all offerors by appropriate RFP Amendment. Oral questions will not be answered."

Supplementing the provisions of Standard Form 33A, Section 10 (Award of Contract) referenced therein, the RFP was issued with a cover letter dated August 15, 1975, which stated, in pertinent part:

"The offeror is encouraged to submit his best proposal initially. The Government may make an award based on the initial offer without discussion or opportunities for proposal revision. If it is determined to be in the best interest of the Government to conduct discussions in the course of this competition, such discussions will be held with all offerors determined to be in the competitive range (as defined in ASPR § 3-805.2). * * *"

Hammer was aware of the RFP alleged deficiencies and ambiguities prior to the closing date for receipt of proposals and was on notice of the proper method to obtain answers to its questions. Moreover, we believe that whatever oral inquiries it made to the procurement personnel regarding these issues did not constitute a protest with the agency. Even if the inquiries did constitute a protest to the agency, the fact that the Air Force declined to acquiesce in Hammer's contentions and amend the RFP prior to the closing date for receipt of initial proposals amounted to "adverse agency action." See section 20(b) of our Bid Protest Procedures. Therefore, any protest to our Office should have been filed within 10 working days after the initial date for receipt of proposals (September 15, 1975) at the very latest, rather than on December 1, 1975.

Accordingly, Hammer's protest against the RFP is untimely. Hammer contends that the issues are "significant" under section 20.2(c) of our Procedures and therefore for consideration on the merits. Significant issues under this provision are those involving procurement principles of widespread interest. 52 Comp. Gen. 20 (1972). We do not believe the issues presented here come within this category.

ASPR § 3-805.2, supra, provides that the competitive range shall include all proposals which have a reasonable chance of being selected for award, and that doubt as to whether a proposal is within the competitive range shall be resolved by including it. Hammer questions the integrity and accuracy of the evaluations by the Proposal Evaluation and Analysis Group (PEAG) and the Contracting Officer--which concluded that its proposal as submitted was not within the competitive range because its deficiencies rendered it totally unacceptable and uncorrectable in the absence of a complete revision of the entire proposal.

In addition to notification provided by letter dated November 24, 1975, the Air Force states that during a telephone conversation of November 26, 1975, Hammer was advised of the

specific reasons why its proposal was not found to be within the competitive range. This information was said to have been read from that portion of the Competitive Range Determination which addressed itself to the Hammer proposal. Reportedly, precis of the PEAG Evaluation Summary informed Hammer that:

"The determination to eliminate Offeror F (the protestor) from the competitive range is based upon the following considerations.

a. The Offeror generally failed to submit the information requested in the solicitation.

b. The Offeror failed to describe his proposed approach to accomplish the tasks of the SOW, as required in the RFP. This reflected a lack of understanding of the requirements.

c. The Offeror did not provide a clear description of his proposed organization structure, making it uncertain as to how he plans to organize to provide the required services. This also reflects a lack of understanding of the Government's requirements.

d. The Offeror provided no plan or schedule for phasing-in his operation. This is a major deficiency due to the unacceptable degree of risk to which it gives rise concerning the Offeror's ability to provide services on the required date.

e. The Offeror did not discuss procedures for providing continued training of personnel as required by the solicitation.

f. The Offeror did not discuss procedures for providing work controls.

g. The Offeror completely failed to provide an estimate of manhours required to perform the services solicited.

These deficiencies are considered to be of such magnitude as to render the proposal totally unacceptable, and uncorrectable without a complete revision of the entire proposal. The PEAG gave Offeror F an overall rating of 'FAIL', and there is no reasonable possibility that award will be made to the Offeror."

Our Office has held that a proposal must be considered to be within the competitive range so as to require negotiations unless it is so technically inferior that meaningful negotiations are precluded. 48 Comp. Gen. 314 (1968). The determination of whether a proposal is technically acceptable is primarily a matter for the contracting agency's judgment, and we will not disturb that judgment absent a clear showing that the agency acted arbitrarily or unreasonably. Edmac Associates, Inc., B-184469, January 30, 1976, 76-1 CPD 68; 52 Comp. Gen. 382 (1972). We have thoroughly reviewed the record to determine whether the decision not to include Hammer's proposal within the competitive range was arbitrary or lacked a reasonable basis.

Hammer has responded to the foregoing list of deficiencies cited by the Air Force. The protester has alleged that several of the cited deficiencies are nothing more than imprecise generalizations. Also, Hammer has cited specific sections of its proposal which it feels demonstrate compliance with the RFP requirements. For example, Hammer contends that the RFP did not require an estimate of manhours, and that in any event, its proposal specifically provided this information in paragraph 2.1D and figure 2.2.

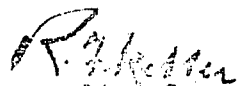
However, we note that pages 14-20 of the RFP called for detailed information on the proposed number of employees; their job classifications; number of vacation hours; number of sick leave hours; number of holiday hours; total working manhours per year; and other information. Hammer's proposal does not appear to contain this required information. Paragraph 2.1D and figure 2.2 of the proposal merely indicate a total number of employees, distributed on an organization chart. While Hammer contends its proposal offered without exception to meet the requirements of RFP section 6.04 (a listing of security sites and the hours when guards are required to be on duty), this information is insufficient to meet the detailed requirements of pages 14-20 of the RFP.

We have considered the other objections made by Hammer to the agency's technical evaluation, and the evaluation record itself. While Hammer contends the Air Force's findings are only generalizations, the technical evaluation record on its face demonstrates a detailed and thorough consideration of the proposals. We do not believe that Hammer's allegations are of sufficient weight to meet the heavy burden of showing that the evaluation and its results were arbitrary or lacked a reasonable basis. We also believe there is merit in the Air Force's observation that Hammer's proposal suggested, at least in part, "* * * that procedures had already been developed by the incumbent contractor and the offeror assumed these would be satisfactory. Therefore, he apparently determined that no requirement existed to develop his own plans, procedures, programs, etc., as required by the RFP."

Based upon our review of Hammer's proposal and the successful proposal, we cannot object to the Air Force determination that Hammer's proposal was technically unacceptable and properly excluded from the competitive range.

A final point for consideration is that Hammer has recently made a request to the Air Force under the Freedom of Information Act for certain documents in the protest file. Hammer has requested that we delay our decision until it has an opportunity to obtain these documents and comment on them. While we appreciate the protester's desire to further supplement its case, we must also be mindful of the procurement situation. This is a before award protest and the Air Force has stated that a delayed award may negatively impact on its security requirements. Under these circumstances, we have proceeded with our decision notwithstanding the protester's request. See Cessna Aircraft Company, et. al., 54 Comp. Gen. 97, 111-112 (1974), 74-2 CPD 91.

For the foregoing reasons, the protest is denied.


Deputy Comptroller General
of the United States